# Lembaga Lebuhraya Malaysia v Pentadbir Tanah Daerah Johor Bahru (Victory Investment Co Sdn Bhd, Intervener)

HIGH COURT (JOHOR BAHRU) — LAND REFERENCE NO 15–29 OF 2010
TEO SAY ENG JC
16 JULY 2013

*Land Law — Acquisition of land — Compensation — Award — Rectification of award — Global amount awarded for acquisition of two lots of land — Collector failing to segregate award made between both lots — Whether land reference court can rectify genuine administrative error made by collector in his award — Award rectified to segregate compensation between both lots — Whether rectified award manifestly excessive — Whether entitled to late payment charges*

Victory Investment Co Sdn Bhd ('VIC') was the owner of two pieces of land identified as Lot 1818 and Lot 2026 ('the plantation lands') measuring approximately 872.16 hectares. The plantation lands were cultivated and operated by VIC as an oil palm estate. The plantation lands were subject matter of land acquisition exercise carried out by the respondent, Pentadbir Tanah Daerah Johor Bahru ('PTJB') for construction of a highway. Based on the Form D issued by PTJB, the size of the land to be acquired were 0.6219 hectares in respect of Lot 1818 and 31.855 hectares in respect of Lot 2026. The total land size to be acquired was 32.48 hectares ('the affected lands'). VIC sought compensation for the acquisition of the affected land and damages for injurious affection on the balance of the plantation lands. A land enquiry was conducted by PTJB's assistant land administrator, Hj Rofiki. The enquiry which was conducted by Hj Rofiki related to both Lot 1818 and Lot 2026. Hj Rofiki awarded a global compensation of RM43,486,157 for both heads of compensation sought by VIC. Thereafter, PTJB proceeded to issue two separate Forms H stating: (a) in respect of Lot 1818, an award of RM8,444,800; and (b) in respect of Lot 2026, an award of RM35,041,357. This land reference was initiated by the applicant, Lembaga Lebuhraya Malaysia ('LLM') seeking to review the award granted by PTJB for the acquisition of Lot 1818 on the ground that it was manifestly excessive. The preliminary issue arising was whether the compensation of RM8,444,800 was for the acquisition of part of Lot 1818 or whether it was for acquisition of part of Lot 1818 and part of Lot 2026.

**Held:**

(1) It was reasonable for the court to make an inference that the award of RM8,444,800 was the compensation for the acquisition of the affected

lands (that is part of Lot 1818 and part of Lot 2026) and not solely for Lot 1818 as alleged by LLM (see para 46).

(2) This was not a case of the collector rectifying his award or issuing a supplementary award as contended by the LLM but rather a case whether the land reference court could exercise its inherent power in rectifying a genuine administrative error made by a collector in his award (see para 50(a)).

(3) Hj Rofiki had admitted in his affidavits that he made an administrative error in failing to segregate the sum of RM8,444,800 between Lot 1818 and Lot 2026. In the absence of any evidence to the contrary, the court could accept his honest admission of an administrative error made by him in his award for Lot 1818 (see para 50(b)(ii)).

(4) The sum of RM8,444,800 was for the compensation of part of Lot 1818 and part of Lot 2026. The sum ought to be shared between Lot 1818 and Lot 2026 in the following manner: (i) the sum of RM161,694 for Lot 1818; and (ii) the sum of RM8,283,106 for Lot 2026. The sum of RM35,041,357 was for damages for injurious affection for the balance of the plantation lands. The court exercised its inherent power to correct the errors made by Hj Rofiki during the land enquiry (see para 51).

(5) In relation to the objection to the amended award and on the issue of late payment charges, the court dismissed the application since the amended award was not manifestly excessive as they had taken into account all the evidence on record including the valuation reports of both parties and considered all the relevant factors before arriving at their conclusions (see para 53).

(6) VIC was not entitled to late payment charges of 8%pa from due date to date of actual payment on the amount withheld, that was, 25%. However, VIC was entitled to the late payment charges of 8%pa from due date to the date of actual payment on the rectified award RM161,694. PTJB was liable to pay the late payment charges of 8%pa from the due date to the date of actual payment on the rectified award (see para 53).

**[Bahasa Malaysia summary**

Victory Investment Co Sdn Bhd ('VIC') adalah pemilik dua keping tanah yang dikenali sebagai Lot 1818 dan Lot 2026 ('tanah-tanah ladang') seluas lebih kurang 872.16 hektar. Tanah-tanah ladang itu adalah hal perkara amalan pemerolehan tanah yang dijalankan oleh responden, Pentadbir Tanah Daerah Johor Bahru ('PTJB') untuk pembinaan lebuh raya. Berdasarkan Borang D yang dikeluarkan oleh PTJB, saiz tanah yang diperolehi adalah 0.6219 hektar berkaitan Lot 1818 dan 31.855 hektar berkaitan Lot 2026. Keseluruhan saiz tanah yang diperoleh adalah 32.48 hektar ('tanah-tanah yang terjejas'). VIC

memohon pampasan untuk pemerolehan tanah-tanah yang terjejas dan ganti rugi untuk keadaan terjejas yang memudaratkan ke atas baki tanah-tanah ladang itu. Satu siasatan tanah telah dijalankan oleh Penolong Pentadbir Tanah PTJB, Hj Rofiki. Siasatan itu telah dijalankan oleh Hj Rofiki berkaitan kedua-dua Lot 1818 dan Lot 2026. Hj Rofiki telah mengawardkan pampasan menyeluruh sejumlah RM43,486,157 untuk kedua-dua kepala pampasan yang dipohon oleh VIC. Selepas itu, PTJB telah mengeluarkan dua Borang H yang berasingan dengan menyatakan: (a) berhubung Lot 1818, award RM8,444,800 diberikan; dan (b) berhubung Lot 2026, award RM35,041,357 diberikan. Rujukan tanah ini dimulakan oleh pemohon, Lembaga Lebuhraya Malaysia ('LLM') memohon untuk menyemak semula award yang diberikan oleh PTJB untuk pemerolehan Lot 1818 atas alasan bahawa ia agak berlebihan. Isu awalan yang timbul adalah sama ada pampasan RM8,444,800 adalah untuk pemerolehan sebahagian daripada Lot 1818 atau sama ada ia adalah pemerolehan sebahagian daripada Lot 1818 dan sebahagian daripada Lot 2026.

**Diputuskan:**

(1) Ia adalah munasabah untuk mahkamah membuat inferens bahawa award sejumlah RM8,444,800 adalah pampasan untuk pemerolehan tanah-tanah yang terjejas (bahawa ia adalah sebahagian daripada Lot 1818 dan sebahagian daripada Lot 3036) dan bukan semata-mata untuk Lot 1818 sebagaimana dikatakan oleh LLM (lihat perenggan 46).

(2) Ini bukan kes di mana pemungut memperbetulkan awardnya atau mengeluarkan award tambahan sebagaimana dihujah oleh LLM tetapi sebaliknya suatu kes sama ada mahkamah rujukan tanah boleh menggunakan kuasa sedia ada utuk memperbetulkan kesilapan pentadbiran yang telah dilakukan oleh pemungut dalam awardnya (lihat perenggan 50(a)).

(3) Hj Rofiki telah mengakui dalam afidavit-afidavitnya bahawa dia telah melakukan kesilapan pentadbiran kerana gagal mengasingkan jumlah RM8,444,800 antara Lot 1818 dan Lot 2026. Dalam ketiadaan apa-apa keterangan bertentangan, mahkamah boleh menerima pengakuan jujurnya berhubung kesilapan pentadbiran yang telah dilakukannya dalam awardnya untuk Lot 1818 (lihat perenggan 50(b)(ii)).

(4) Jumlah RM8,444,800 adalah pampasan untuk sebahagian daripada Lot 1818 dan sebahagian daripada Lot 2026. Jumlah itu patut dikongsi antara Lot 1818 dan Lot 2026 dalam cara berikut: (i) jumlah RM161,694 untuk Lot 1818; dan (ii) jumlah RM8,283,106 untuk Lot 2026. Jumlah RM35,041,357 adalah untuk ganti rugi bagi kerosakan yang menjejaskan baki tanah-tanah ladang tersebut. Mahkamah

menggunakan kuasa sedia adanya untuk memperbetulkan kesilapan yang dilakukan oleh Hj Rofiki semasa siasatan tanah tersebut (lihat perenggan 51).

(5) Berhubung bantahan terhadap award yang dipinda dan berhubung isu bayaran caj lewat, mahkamah menolak permohonan itu kerana award yang dipinda itu tidak terlalu banyak kerana mahkamah telah mengambil kira semua keterangan atas rekod termasuklah laporan penilaian tentang kedua-dua pihak dan mempertimbangkan semua faktor-faktor berkaitan sebelum mencapai kesimpulan (lihat perenggan 53).

(6) VIC tidak berhak terhadap bayaran caj lewat 8% setahun dari tarikh patut dibayar sehingga tarikh bayaran sebenar untuk jumlah yang dipegang, iaitu, 25%. Walau bagaimanapun, VIC berhak terhadap bayaran caj lewat 8% setahun dari tarikh patut dibayar sehingga tarikh bayaran sebenar terhadap award yang diperbetulkan sejumlah RM161,694. PTJB bertanggungjawab untuk membayar bayaran caj lewat 8% setahun dari tarikh patut dibayar sehingga tarikh sebenar bayaran ke atas award yang diperbetulkan itu (lihat perenggan 53).]

**Notes**

For cases on compensation, see 8(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2194–2241.

**Cases referred to**

*Eu Finance Berhad v Lim Yoke Foo* [1982] 2 MLJ 37, FC (refd)

*Hamidon bin Ahmad v Collector of Land Revenue, Jasin* [1970] 1 MLJ 202 (refd)

*Mallisamy a/l Periasamy & Anor v Pentadbir Tanah Melaka Tengah & Anor* [1998] 5 MLJ 495, HC (refd)

*Oriental Rubber and Oil Palms Sdn Bhd v Pemungut Hasil Tanah Kuantan* [1983] 1 MLJ 315 (refd)

*Pemungut Hasil Tanah Doeroot Baroot Daya (Balik Pulau), Pulau Pinang v Kam Gin Paik & Ors* [1983] 2 MLJ 390, FC (refd)

**Legislation referred to**

Evidence Act 1950 ss 91, 92
Land Acquisition Act 1960 ss 12, 14, 33, 37(1), 38(5), Forms D, G, H, N
National Land Code s 214A

*Ramesh Sanghvi (Bharti Seth with him) (Kassim Tadin, Wai & Co) for the applicant.*

*Nor Jamilah Shuhadah bt Tohet (State Legal Advisors, State Legal Adviser's Chambers) for the state legal adviser's chambers.*

*KT Tan (ZC Tan with him) (Lim Kian Leong & Co) for the intervener.*

**Teo Say Eng JC:**

**[1]** This is a land reference initiated bv the applicant, Lembaga Lebuhraya Malaysia ('LLM') seeking to review the award granted by the respondent, Pentadbir Tanah Daerah Johor Bahru ('PTJB') for the acquisition of Lot 1818 on the purported ground that it is manifestly excessive. Victory Investment Co Sdn Bhd (VIC), the owner of two pieces of land, that is Lot 1818 and Lot 2026 both of Mukim Sg Tiram, Johor Bahru is the intervener of this land reference proceeding.

BACKGROUND FACTS LEADING TO HJ ROFIKI BIN DATO HAJI SHAMSUDIN'S ('HJ ROFIKI') AFFIDAVIT AFFIRMED ON 25 NOVEMBER 2011 AS SUMMARISED BY LLM

**[2]** The substantive land reference proceedings first came up for hearing before YA Dato Hue Siew Kheng and the two assessors on 12 August 2011

**[3]** Only LLM's written submission (encl 19) was before YA Dato Hue Siew Kheng on the first hearing date of 12 August 2011.

**[4]** On the directions given by the learned judge YA Dato Hue Siew Kheng on 12 August 2011 both LLM and VIC filed their respective written submissions:

(a) VIC's written submission (encl 20); and

(b) LLM's written reply submission (encl 21).

**[5]** The land reference was then adjourned by the court from 12 August 2011 to 23 September 2011 for continued hearing/decision;

**[6]** VIC's written submission (encl 20) had raised, inter alia, the following issues before YA Dato Hue Siew Kheng:

(a) That Hj Rofiki had failed to make the necessary apportionment of the compensation awarded for Lot 1818 and Lot 2026;

(b) That Hj Rofiki's failure to make the necessary apportionment had 'inadvertently' caused Hj Rofiki in issuing an 'erroneous' Form G for Lot 1818;

(c) That Hj Rofiki had made an 'administrative error' in failing to apportion the compensation of RM8,444,800 between Lot 1818 and Lot 2026.

**[7]** Eight days before the land reference had been scheduled to come up before YA Dato Hue Siew Kheng, VIC filed an originating summons on 15 September 2011 vide Johor Bahru High Court Originating Summons 24M–256–09 of 2011 ('the 24M-256–09/2011 proceedings') naming the Pentadbir Tanah Daerah Johor Bahru ('the first defendant') and LLM ('the second defendant') seeking enlargement of time under s 38(5) of the Land Acquisition Act 1960 for VIC to file Form N out of time to object to the compensation awarded for Lot 1818 and Lot 2026.

**[8]** It was in this 24M–256–09/2011 proceedings that the Johor State Legal Adviser appearing for the first defendant filed Hj Rofiki's affidavit affirmed on 25 November 2011 to support VIC's aforesaid originating summons and wherein Hj Rofiki had in reply to paras 11, 12 and 13 of VIC's supporting affidavit 'admitted' that he had made an 'administrative error' in failing to apportion the award of RM8,444,800 between Lot 1818 and Lot 2026 and that he had made an 'error' in p 5 of his notes of enquiry.

(Hj Rofiki's affidavit affirmed on 25 November 2011 — annexure 1).

**[9]** The 24M-256-09/2011 proceedings came up for hearing between YA Tuan Gunalan Muniandy on 8 March 2012 as YA Dato Hue Siew Kheng had been transferred to Kuala Lumpur High Court. The learned judicial commissioner Tuan Gunalan Muniandy dismissed VIC's originating summons and has given his written grounds of decision ('the 8 March 2012 decision').

(Grounds of decision by YA Tuan Gunalan Muniandy — annexure 2).

**[10]** Subsequently 13 days later on 21 March 2012, VIC filed an application by way of SDK (encl 23) in the land reference court for leave for VIC to be allowed to adduce 'fresh' evidence in the land reference court, that is two documents:

(a) Hj Rofiki's affidavit affirmed on 25 November 2011 in the 24M–256–09/2011 proceedings; and

(b) a letter dated 21 September 2011 from JPPH to Messrs Lim Kian Leong.

**[11]** After considering the written submissions, on 6 April 2012 YA Tuan Gunalan Muniandy dismissed VIC's SDK and has provided his grounds of decision ('the 6 April 2012 decision').

**[12]** The Court of Appeal had on 10 September 2012 allowed VIC's appeal against the 6 April 2012 decision and had allowed the two documents in paras 2.9(i) and (ii) to be before this court subject to the proviso, that the weight to be attached to Hj Rofiki's affidavit is a matter for the land reference court to decide.

**[13]** In the interim period, on 29 June 2012, the state legal adviser's chambers, on behalf of the respondent, has proceeded to file in the land reference another affidavit affirmed by Hj Rofiki on 29 June 2012 (encl 33) and wherein Hj Rofiki has also averred that he had made an 'administrative error' and that he had 'failed' to apportion the award of RM8,444,800 between Lot 1818 and Lot 2026.

**[14]** It has to be noted that the chambers had proceeded to file this affidavit of Hj Rofiki affirmed on 29 June 2012 (encl 33) inspite of YA Tuan Gunalan Muniandy's decision on 6 April 2012 disallowing the admission of Hj Rofiki's affidavit affirmed on 25 November 2011 containing similar averments of 'administrative error'.

**[15]** On 2 November 2012 VIC filed a notice to cross-examine Haj Mohd Rofiki bin Dato Hj Shamsudin (encl 44). LLM has strongly opposed to the VIC's notice to cross examine Hj Mohd Rofiki. Having considered the written submissions by the respective parties I dismissed the application as I agree with learned counsel for LLM that it will serve no purpose whatsoever for Hj Rofiki to be required to give evidence in this land reference proceedings to explain further his administrative error as Hj Rofiki's affidavit has already said all that is said and it is for the court to consider the weight to be given to the said affidavit.

**[16]** The court then directed the parties to submit on the following preliminary issue:

> Whether the compensation in the sum of RM8,444,800 was for the acquisition of part of Lot 1818 or whether the compensation in the sum of RM8,444,800 was for acquisition of part of Lot 1818 and part of Lot 2026.

## BACKGROUND FACTS LEADING TO THE AWARDS OF RM8,444,800 FOR PART OF LOT 1818 AS SUMMARISED BY VIC

**[17]** At all material times Victory Investment Co Sdn Bhd ('VIC') is the owner of two pieces of land identified as Lot 1818 and Lot 2026 ('the plantation lands').

**[18]** The plantation lands measure approximately 872.16 hectares. The plantation lands are being cultivated and operated by VIC as an oil palm estate which is known as 'Ladang Getah Sungai Tiram'.

Pursuant to s 214A of the National Land Code, the plantation lands are

considered to be an 'estate land'.

LAND ENQUIRY PROCEEDINGS

**[19]** On or about 2004, the plantation lands were subject matter of land acquisition exercise carried out by PTJB for and on behalf for a construction of a highway known as 'Lebuhraya Senai — Desaru'. Based on the Form D issued by PTJB, the size of the land to be acquired were as follows:

(a) in respect of Lot 1818, approximately 0.6219 hectares; and

(b) in respect of Lot 2026, approximately 31.855 hectares. As such, the total land size to be acquired from VIC was approximately 32.48 hectares ('the affected lands').

See: Form D issued by PTJB dated 4 November 2004, TAB 1 intervener's bundle of documents.

**[20]** At that material time, VIC was seeking for two forms of compensation for the acquisition of the affected lands which were as follows:

(a) compensation for the acquisition of the affected lands; and

(b) damages for injurious affection on the balance of the plantation lands as the acquisition of the affected lands had severed the plantation lands into two separate pieces.

('the two heads of compensation').

**[21]** On or about 8 December 2005, a land enquiry hearing was conducted bv PTJB to determine the quantum of compensation to be awarded to VIC for the acquisition of the affected lands ('the said land enquiry').

**[22]** The officer conducting the said land enquiry was the assistant land administrator, Hj Mohd Rofiki bin Dato' Hj Shamsudin ('Hj Rofiki').

**[23]** It is the contention of both VIC and PTJB that the said land enquiry was a joint hearing for Lot 1818 and Lot 2026.

**[24]** By minutes of notes of enquiry in its entirety, it is obvious that the land enquiry which was conducted by Hj Rofiki relates to both Lot 1818 and Lot 2026.

**[25]** Upon deliberating on the submissions of the parties attending the said land enquiry, Hj Rofiki proceeded to award a global compensation of RM43,486,157 for the two heads of compensation which were sought by VIC

as compensation for acquisition of the affected lands, that is, acquisition of part of Lot 1818 and part of Lot 2026 ('the global compensation'). A

**[26]** It is not disputed that the global compensation awarded by Hj Rofiki for the acquisition exercise for the affected lands was acceptable by VIC. B

**[27]** Thereafter, PTJB respondent proceeded to issue two separate Form H. The Form H for Lot 1818 and the Form H for Lot 2026 which were received by VIC state the following:

(a) In respect of Lot 1818, an award of RM8,444,800; and C

(b) In respect of Lot 2026, an award of RM35,041,357.

**[28]** By jointly reading the Form H for Lot 1818 and Form H for Lot 2026, it is obvious that the total award granted by PTJB was in the sum of RM43,486,157. D

It is not disputed that VIC accepted the aforesaid awards.

VIC'S SUBMISSION

E

**[29]** VIC submits that the sum RM8,444,800 was for the acquisition of the affected lands (Lot 1818 and Lot 2026) based on the contemporaneous documents:

(a) perusing the minutes of the notes of enquiry dated 8 December 2005 prepared by Hj Rofiki, the officer from Jabatan Penilaian dan Perkhidmatan Harta ('JPPH') who attended the land enquiry was one Zulifahalila bt Abbas; and F

(b) in the course of the land enquiry proceedings, Zulifahalila bt Abbas made the following statements: G

RM39,532,870
Lot 2026 dan 1818 (RM2.40/ka)
= RM8,444,800
Penjelasan Lot 2026
= RM31,088,070 H

**[30]** It is obvious that the valuation report which was produced by Zulifahalila bt Abbas and referred to by Hj Rofiki was the report which was dated 5 December 2005. I

**[31]** The JPPH's valuation report dated 5 December 2005 at item 12.0 under the heading 'Nilaian' states the following:

A Setelah menimbang semua factor-faktor yang mempengaruhi nilai, saya berpendapat pampasan yang munasabah dan berpatutan bagi kedua-dua lot terlibat adalah sebagaimana berikut-

| | |
|---|---|
| Tanah: 32.48 hektar @ RM260,000 sehektar | RM8,444,800 |
| B Penjejasan Tanah Baki | |
| Penurunan nilai 15%: 797.13 | |
| @ RM39,000 sehektar | RM31,088,070 |
| | RM39,532,870 |

C

**[32]** To further corroborate that the valuation report dated 5 December 2005 was referred to at the land enquiry, VIC invites this honourable court to refer to the following documents:

D (a) JPPH had issued a letter to the Johor Legal Advisor dated 21 September 2011 which states the following:

> 2 Saya mengesahkan bahawa nilai pampasan tanah sebanyak RM8,444,800 adalah pampasan bagi kedua-dua Lot 1818 dan 2026. Kadar nilaian adalah E pada harga RM260,000 sehektar. Pecahan Nilaian tanah terlibat adalah seperti berikut:
>
> 2.1 Lot 1818: 0.62 sehektar @ RM2600 sehektar = RM161,200
>
> 2.2 Lot 2026: 31.86 sehektar @ RN260,000 sehektar = RM8,283,600
>
> F Jumlah Nilai Tanah Terlibat Lot 1818 dan 2026: RM8.444,800
>
> 2.3 Laporan nilaian terperinci adalah seperti Laporan pejabat ini yang difailkan di Mahkamah melalui Pejabat Penasihat Undang-Undang Negeri Johor.

G (b) JPPH's undated valuation report at item 14.0 under the heading 'Nilaian' which was filed at this honourable court for this land reference proceedings which states the following:

> Setelah mempertimbangkan semua faktor yang mempengaruhi nilaian, nilai H pampasan yang munasabah ke atas harta tanah terlibat sebagaimana berikut:

| | |
|---|---|
| Nilaian Tanah | |
| 32.48 hektar© RM260,000 sehektar | RM 8,444,800 |
| I Kesan Penjejasan Tanah Baki | |
| (Penurunan nilai 15%) | |
| 797.13 @ RM390 sehektar | RM 31,088,070 |

RM39,532,870

**[33]** As such, the market rate was RM260,000 per hectare which was awarded by Hj Rofiki at the land enquiry was a fair and reasonable compensation in respect of the acquisition of the affected lands measuring approximately 32.48 hectares (that is acquisition of part of Lot 1818 and part of Lot 2026). Therefore, the total compensation to be paid for the acquisition of 32,48 hectares would be in the sum of RM8,444,800.

**[34]** However, LLM has denied that the valuation report which was referred to at the land enquiry proceedings was not the report dated 5 December 2005 but a purported report which was dated 16 September 2005.

**[35]** VIC submits that the aforesaid allegation is totally misconceived for the following reasons:

(a) Item 12.0 under the heading of 'Nilaian' it states that the acquired land was 4.27 hectares even though it is clear from the evidence that the acquired land was 0.62 hectares for Lot 1818 and 31.86 for Lot 2026;

(b) Item 12.0 under the heading of 'Nilaian' it states that the rate was RM780 per hectare even though it is clear from the minutes of the land enquiry that the rate was RM2.40 per square feet (converted RM260,000 per hectare); and

(c) The comparables which were referred to in the report were lands which are situated in 'Kota Tinggi' and these comparables are not within the vicinity of the plantation lands (Lot 1818 and Lot 2026 which are situated in the Mukim Sg Tiram, Johor Bahru).

**[36]** Further, this honourable court ought to take cognizance of the LLM's Valuation Report which was prepared by Rahim & Co in which it had stated that the market value of the plantation lands (Lot 1818 and Lot 2026) was RM200,000 per hectare.

**[37]** In arriving at the aforesaid valuation of RM200,000 per hectare, Rahim & Co had used three comparables which are as follows:

(a) Lot 2437, Mukim of Tebrau;

(b) Lot 169, Mukim of Tebrau, Lot 825 to Lot 83, Mukim of Plentong and

(c) Lot 804 & Lot 806 Mukim of Tebrau, Lot 1788 & Lot 577 Mukim of Kota Tinggi.

**[38]** It should be noted that the aforesaid comparables are the similar comparables which were used by JPPH in preparing the valuation report dated 5 December 2005 and the undated valuation report which was filed in this honourable court.

**[39]** It is submitted that the aforesaid facts lead to an irresistible conclusion that the valuation report which was relied upon by Hj Rofiki at the land enquiry was the version dated 5 December 2005 and not the version dated 14 September 2005.

**[40]** In addition, in the course of this land reference proceedings, Hj Rofiki affirmed two separate affidavits in which he has categorically admitted to the following:

(a) the land enquiry on 8 December 2005 was a joint hearing for Lot 1818 and Lot 2026;

(b) he had failed to make the necessary segregation the sum of RM8,444,800 being the compensation of the acquisition of the affected lands to be shared between Lot 1818 and Lot 2026;

(c) he had mistakenly placed the sum of RM8,444,800 being the compensation for the affected lands as an award for the acquisition of part of Lot 1818 (solely);

(d) the sum of RM35,041,357 being damages for injurious affection for the balance of the plantation lands; and

(e) he had referred to JPPH's valuation report dated 5 December 2005 at the land enquiry.

**[41]** The evidence of Hj Rofiki was initially rejected by Justice Gunalan on the ground that it is irrelevant and not credible.

**[42]** However, the honourable Court of Appeal has ruled that the evidence by Hj Rofiki is relevant to the land reference proceedings but the weight to be attached to this evidence is to be left to this honourable court.

**[43]** To further fortify the evidence of Hj Rofiki that he had made a mistake in failing to apportion the compensation of RM8,444,800 between Lot 1818 and Lot 2026, VIC invites this honourable court to refer to item G of the minutes of the land enquiry under the heading 'Perintah'.

**[44]** Perusing the minutes of the land enquiry, it discloses that only award granted for Lot 2026 was for damages for injurious affection amounting to RM35,041,357.

**[45]** This is a separate award granted by Hj Rofiki for damage caused by the acquisition of the affected lands and does not in anyway whatsoever relate to an award for the acquisition of the affected lands which includes Lot 2026.

**[46]** As such, it is reasonable for this honourable court to make an inference that the award of RM8,444,800 was the compensation for the acquisition of the affected lands (that is part of Lot 1818 and part of Lot 2026) and not solely for Lot 1818 as alleged by LLM.

**[47]** Further, it is submitted that if the award of RM8,444,800 was to be reduced, it will inevitably caused LLM to be unjustly enriched as VIC will not receive any compensation for the acquisition of part of Lot 2026.

**[48]** Such an unjust and unfair position would be contrary to the spirit of the provisions of the Land Acquisition Act 1960 which provides that a reasonable compensation ought to be granted to a landowner in a compulsory acquisition exercise. As such, this honourable court ought to exercise its equitable and inherent jurisdiction to maintain the award of RM8,444,800 as being compensation for the acquisition of the affected lands (that is part of Lot 1818 and part of Lot 2026).

LLM'S SUBMISSION

**[49]** The main contentions of LLM may be summarised as follows:

(a) The LLM ('the applicant') submits that the holding of the land enquiry under s 12 of the LAA and the making of the award pursuant to s 14 of the Act are quasi judicial functions and an award in Form G shall be final and conclusive evidence of area and value of land in the opinion of the collector. The LLM has cited the following authorities to show the legal character of the awards in Form G and Form H:

(i) *Hamidon bin Ahmad v Collector of Land Revenue, Jasin* [1970] 1 MLJ 202

(ii) *Pemungut Hasil Tanah Daerah Barat Daya (Balik Pulau), Pulau Pinang v Kam Gin Paik & Ors* [1983] 2 MLJ 390

(iii) *Oriental Rubber and Oil Palms Sdn Bhd v Pemungut Hasil Tanah Kuantan* [1983] 1 MLJ 315.

The LLM submits that the LAA does not contain any provision under which the land administrator may review or rectify his award or issue a supplementary award after one has been made under s 14 under the guise of administration error. However, the LLM concedes that s 33 only allows the collector to formally correct verbal errors or remedy some accidental defect or omission. However, there are no such provisions in the LAA to allow Hj Rofiki to correct

A the so called 'administrative error' by way of his averments in his two affidavits of 25 November 2011 and 29 June 2012 and Hj Rofiki is clearly functus officio: see *Eu Finance Berhad v Lim Yoke Foo* [1982] 2 MLJ 37.

(b) The VIC has not at any time since 8 December 2005 or 17 January 2006 B or at any time thereafter made any protest or objections to the respondent as to the quantum of compensation awarded for Lot 1818 or as to the apportionment of the compensation award in Form G and Form H in respect of Lot 1818. The LLM submits that the doctrine of estoppels clearly applies both against the PTJB ('the respondent') and VIC given C that VIC has not only uncondictionally accepted the award but has received 75% of the award monies and the interest in respect of Lot 1818 for delayed payment;

(c) VIC's election to accept the respondent's award for Lot 1818 and the legal D effect of VIC's election:

(i) election occurs at common law when a party is faced with two inconsistent rights and the party has to elect one of the rights which he wishes to exercise;

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(ii) once the party exercises that right, the party cannot then exercise the inconsistent right;

(iii) the applicant submits that VIC having elected to accept the respondents award for Lot 1818 as well as the monies under the F award (that is 75%) cannot both accept the respondent's award and at the same time reject it by saying that the respondent's award and is flawed, that is that there was an 'administrative error' made by Rofiki in failing to apportion the RM8.44m for Lot 1818 and Lot 2026 and that Rofiki had 'erroneously' issued Form G and Form G G for Lot 1818 by placing the entire compensation of RM8,444,800 in Lot 1818;

(iv) VIC cannot take the benefit under the respondent's award without taking the accompanying burden as to the effect of the respondent's award which says what it says in plain and simple terms that the H compensation award of RM8,444,800 is for Lot 1818. The RM8,444,800 as stated in the Form G award does not make any reference to Lot 2026. It is not in dispute that the respondent had issued a separate Form G and Form H for Lot 2026. It is plain and simple as to what the Form G and Form H meant. There is no I ambiguity whatsoever;

(v) VIC cannot now be heard to say (that is after six years) that the Rofiki has made an 'administrative error'. Likewise Hj Rofiki's affidavit of 25 November 2011 and 29 June 2012 that the award of

RM8,444,800 was 'intended' for both Lot 1818 and Lot 2026 is improper and ought to be rejected outright;

(d) Issue of alteration, change or amendment of the respondent's award of RM8,444,800 for Lot 1818:

(i) The legal poser then is whether the land reference court can alter, change or amend the respondent's award of RM8,444,800 for Lot 1818 to the RM8,444,800 award was meant for Lot 1818 and for Lot 2026 based on the 'admissions' made by Hj Rofiki in his two affidavits of 25 November 2011 and 29 June 2012 that he had made an 'administrative error' 'apabila menyatakan amaun pampasan RM8,444,800 adalah untuk Lot 1818 sahaja sedangkan ia sepatutnya untuk kedua-dua Lot 1818 dan Lot 2026 (dan bukan untuk satu lot sahaja)'.

(ii) The LLM refers to the grounds of judgment of Gunalan J, in the SP24M–256–09/2011 proceedings (please see para 55 of the submissions) where His Lordship had made the following observations at para 26 of the judgment:

> as for the purported 'administrative error' by D2, the record speaks for itself. Plaintiff took no steps and made no attempts to rectify the record for more than 5 years after having accepted substantial payment on the awards. The statutory documents Form G and Form H clearly attest to two separate awards and two offers of compensation for the 2 lots in question. Hence the assertion of 'administrative error' which was not borne out by the documentary evidence was untenable.

(iii) The LLM respectfully submits that the above reasoning of Gunalan J is on a sound footing and on that premise this honourable court ought to weigh Hj Rofiki's averments with utmost caution.

(iv) The LLM respectfully submits that VIC had the statutory remedy under s 37(1) of the LAA as soon as VIC became aware that the respondent's award for Lot 1818 was incorrect to have filed objections in Form N against the award to seek relief on the issue of the respondent's so called failure to have apportioned the RM8,444,800 for Lot 1818 and Lot 2026. VIC did not take any such step.

(v) VIC also had the option of seeking a declaration from the court on the respondent's so called failure to have made the apportionment. Again VIC failed to do this.

(vi) Hj Rofiki is not at liberty to correct his so called 'administrative error' and 'mistake in failing to apportion' as he is functus officio.

(vii) The LLM relies on the dicta of Suriyadi J (now FCJ) in the case of

*Mallisamy a/l Periasamy & Anor v Pentadbir Tanah Melaka Tengah & Anor* [1998] 5 MLJ 495 (IAP TAB 14) which His Lordship's dicta is as follows:

> It is thus quite safe to say that in this case, the collector was carrying out his duty in a judicial capacity and was thus bound by certain factors required by the law. In this case, pursuant to that capacity, once the collector had delivered his award, he should have left matters as they were. Any alteration, changes or amendments which were major and necessary should have been left to a Court of higher jurisdiction. The collector or any parties interested should have taken the course of revealing all the facts before the High Court and let the act or decision be done as an act of the Court and not of the collector.
>
> Whether he had altered, changed or had made a mistake, I viewed his decision to be void on the basis of the principle of functus officio. Resorting to *Jowitt's Dictionary of English Law* (2nd Ed) at p 840, 'functus officio' means:
>
> > … (having discharged his duty), an expression applied to a judge, magistrate or arbitrator who has given a decision or made an order or award so that his authority is exhausted…
>
> To wind up this legal poser. if ever there was any correction to be done on the original order, then it was the business of the Courts to do so after an appeal had been lodged, and not by the collector.

(viii) It must be emphasised that in the above case the aggrieved party had sought a declaration from the High Court to declare the land administrator's second award as null and void.

(e) Weight to be attached to Hj Rofiki's affidavit affirmed on 25 November 2011 and 29 June 2012:

(i) The LLM is mindful of the fact that the Court of Appeal has made a ruling that Hj Rofiki's affidavits are relevant for purposes of the land reference but the weight to be attached to the affidavits is left for the High Court to decide;

(ii) The applicant is also mindful of the fact that on the issue of what weight to be given to the two affidavits of Hj Rofiki is a matter that is entirely within the discretion of the land reference court; and

(iii) However the LLM urges the court to treat Hj Rofiki's affidavits with utmost caution the admission of administrative error by Hj Rofiki as it defies loqic and common sense as to what had suddenly alerted Hj Rofiki to make averments of administrative error six years after he had issued Form G and Form H and after VIC had raised the issue of administrative error in VIC's written submission. The LLM respectfully submits that this honourable court should treat with

utmost caution the admission of administrative error by Hj Rofiki in the light of ss 91 and 92 of the Evidence Act 1950 and the statutory provisions of LAA.

## DECISION

**[50]** Having heard the submissions from both the LLM (applicant) and the VIC (the intervener), I have come to the following rulings:

(a) On the issue whether Hj Rofiki may review or rectify his award under the guise of administrative error after he was functus officio, I am of the considered view that this is now a non issue since the issue has been raised before the Court of Appeal in the 24M-256–09/2011 proceedings and the Court of Appeal after listening to the submissions by both the parties had ruled that Hj Rofiki's affidavit and the letter dated 21 September 2011 from JPPH to Miss Lim Kian Leong are admissible and the weight to be attached to Hj Rofiki's affidavit is a matter for the land reference court to decide.

It is therefore the duty of the land reference court to determine what weight to be given to the affidavits.

Furthermore, this is not a case of the collector rectifying his award or issuing a supplementary award as contended by the LLM but rather a case whether the land reference court could exercise its inherent power in rectifying a genuine administrative error made by a collector in his award. I am of the considered view that the answer should be in the affirmative. To hold otherwise, it will inevitably cause LLM to be unjustly enriched if the award of RM8.444,800 for Lot 1818 was to be reduced as VIC will not receive any compensation for the acquisition of part of Lot 2026.

(b) Having perused the affidavits of Hj Rofiki vis a vis the contemporaneous documents that is, the valuation reports and the notes of enquiry, I am satisfied that the affidavits are reliable and should be accepted by this court for the following reasons:

(i) first and foremost I find that Hj Rofiki is an independent witness and does not have any vested interest in the outcome of the land reference proceedings as far as the awards are concerned;

(ii) he has now admitted in his affidavits that he made an administrative error in failing to segregate the sum of RM8,444,800 between Lot 1818 and Lot 2026. In the absence of any evidence to the contrary, I see no reason not to accept his honest admission of an administrative error made by him in his award for Lot 1818;

(iii) I find that his admission of administrative error is supported by the

contemporaneous documents that is:

(A) the minutes of the notes of enquiry show that the land enquiry was conducted by Hj Rofiki in relation to Lot 1818 and Lot 2026.

(B) the valuation report dated 5 December 2005 shows that the compensation of RM8,444,800 was for the acquisition for part of Lot 1818 and part of Lot 2026 and not solely for Lot 1818 as alleged by LLM.

(C) the comparison of the valuation report dated 5 December 2005 and the LLM's valuation report prepared by Rahim & Co dated 16 September 2005, I am satisfied that the valuation report relied upon by Hj Rofiki was the valuation report dated 5 December 2005.

(D) the letter by JPPH dated 21 September 2011 clearly stated that the award of RM8,444,800 is for both the Lot 1818 and Lot 2026.

**[51]** Based on Hj Rofiki's affidavits and the contemporaneous documents which were supported by the letter by JPPH dated 21 September 2011, the awards which were granted by Hj Rofiki should be as follows:

(a) The sum of RM8,444,800 was for the compensation of part of Lot 1818 and part of Lot 2026;

(b) The sum ought to be shared between Lot 1818 and Lot 2026 in the following manner:

(i) the sum RM161,694 for Lot 1818; and

(ii) the sum of RM8,283,106 for Lot 2026.

(c) The sum of RM35,041,357 was for damages for injurious affection for the balance of the plantation lands.

I am exercising my inherent power to correct the errors made by Hj Rofiki during the land enquiry proceedings according to the awards stated in paras 8.2.1 to 8.2.3 above.

**[52]** Since the award for Lot 1818 was reduced to RM161,694 as a result of my rectification of the administrative error made by PTJB on 18 January 2013 the LLM (the applicant) still maintains its objection to the reduced amount and the hearing of the objection was subsequently adjourned to 26 April 2012.

**[53]** On 26 April 2013, the court was assisted by two assessors namely:

(a) Abdul Khalid bin Abdul Rahman

(b) Mohamad @ Masri bin Jeinae

Having heard the written submissions by all the parties namely, the LLM (the applicant), the PTJB (the respondent) and VIC (the intervener) on the objection to the amended award and on the issue of late payment charges, the court dismissed the application with no order as to cost based on the consensus of both the assessors that the amended award was not manifestly excessive as they had taken into account all the evidence on record including the valuation reports of both parties and considered all the relevant factors before arriving at their conclusions.

Apart from the above, the court has also made the following rulings on late payment charges, cost of private assessor and the deposit as follows:

(a) the VIC (the intervener) is not entitled to late payment charges of 8%pa from due date to date of actual payment on the amount withheld, that is, 25%;

(b) however the intervener is entitled to the late payment charges of 8%pa from due date to the date of actual payment on the rectified award RM161,694;

(c) the PTJB (the respondent) is held responsible and is liable to pay the late payment charges of 8%pa from the due date to the date of actual payment on the rectified award;

(d) I order the 25% amount withheld that is RM2,111,199.75 to be returned to the VIC (the intervener);

(e) the cost of assessor (Swasta) at RM500 to be borne by the LLM (applicant); and

(f) deposit to be returned to the applicant.

*Order accordingly.*

Reported by Kanesh Sundrum